

Schimmel
H-4-1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

215 Fremont Street
San Francisco, Ca. 94105

CERTIFIED MAIL NO. P 724 788 222
RETURN RECEIPT REQUESTED

In Reply
Refer to:

H-4-2
[REDACTED]
MND

NOV 27 1989

Mr. John R. Lassen, President
Salt River Project
Box 52025
Phoenix, AZ 85072

1521 Project Drive
Tempe, AZ 85281

Re: Determination of Violation, Compliance Order and
Notice of Right to Request a Hearing

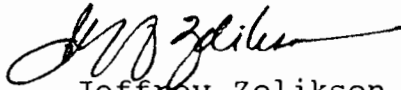
Dear Mr. Lassen:

Enclosed please find a Determination of Violation, Compliance Order and Notice of Right to Request a Hearing (hereinafter "Complaint") concerning violations of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. §6901 et seq. at y [REDACTED] station facility..

The Complaint and the Rules of Practice, 40 C.F.R. Part 22, set forth the alternatives available to you in responding to the alleged facts, violations, proposed penalties, and opportunity for hearings. It should be emphasized that if you wish to request a hearing and avoid being found in default, you must file a written Answer within thirty (30) days of your receipt of the Complaint.

The EPA is interested in resolving the violations listed in the complaint. Whether or not you choose to request a hearing, you are encouraged to explore the possibility of settlement by contacting Thelma Estrada, Assistant Regional Counsel at (415) 744-1080 or at the above address.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Zelikson", with a long horizontal flourish extending to the right.

Jeffrey Zelikson
Director, Hazardous
Waste Management Division

Enclosures

cc: Acting Director, NEPA
Al Brown, AZDEQ
Howard Voepel, NGS

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10 UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
11 REGION 9

12 In the Matter of) Docket RCRA- 09-90-0001
13 SALT RIVER PROJECT:) DETERMINATION OF VIOLATION
14 NAVAJO GENERATING STATION) COMPLIANCE ORDER
15) AND
16) NOTICE OF RIGHT TO
17) REQUEST A HEARING
18)
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17 DETERMINATION OF VIOLATION

18 A. INTRODUCTION AND STATEMENT OF FACTS

19 1. This is a civil administrative enforcement action in-
20 stituted pursuant to Section 3008(a)(1) of the Resource Conserva-
21 tion and Recovery Act (RCRA), as amended, 42 U.S.C. Section
22 6928(a)(1), and the Consolidated Rules of Practice Governing the
23 Administrative Assessment of Civil Penalties and the Revocation
24 or Suspension of Permits, 40 C.F.R. Part 22. Complainant is the
25 United States Environmental Protection Agency, Region 9 (EPA).
26 Respondent is Salt River Project, an Arizona Municipal Corpora-
27 tion.
28

1 2. Salt River Project operates a facility that generates
2 hazardous waste, located near Page, Arizona on the Navajo Nation,
3 EPA Identification number AZD074452426 ("the Facility").

4 3. This Determination of Violation, Compliance Order and
5 Notice of Right to Request a Hearing (hereinafter "Complaint")
6 serves as notice that the EPA, on the basis of information avail-
7 able to it, has determined that Respondent is in violation of
8 Sections 3002, 3004, 3005 and 3010 of RCRA [42 U.S.C. Section
9 6924, 6925 and 6930] and the regulations adopted pursuant
10 thereto.

11
12 B. JURISDICTION

13 4. Respondent is a "person" as defined in Section 1004(15)
14 of RCRA, 42 U.S.C. Section 6903(15) and 40 C.F.R. Section 260.10
15 and 270.2.

16 5. Respondent is an "operator" as defined in 40 C.F.R. Sec-
17 tion 260.10.

18 6. The Facility is an "existing hazardous waste management
19 facility" as defined in 40 C.F.R. § 260.10.

20 7. The Facility was in operation on or before November 19,
21 1980.

22 8. Section 3008 of RCRA [42 U.S.C. Section 6928] authorizes
23 the EPA Administrator to issue orders requiring compliance im-
24 mediately or within a specified time for violation of any re-
25 quirement of Subtitle C of RCRA, Section 3001 of RCRA et seq. [42
26 U.S.C. Section 6921 et seq.].

1 9. On or about November 14 and 15, 1988, the EPA inspected
2 the Facility and found evidence of violations of various require-
3 ments of 40 C.F.R. Parts 262, 265 and 270, concerning treatment,
4 storage and disposal of hazardous waste, requirements for permit
5 application, notification of hazardous wastes handled, and stan-
6 dards for interim status facilities.

7 10. Respondent, in violating 40 C.F.R. Parts 262, 265 and
8 270, violated Subtitle C of RCRA, and is therefore subject to the
9 powers vested in the EPA Administrator by Section 3008 of RCRA
10 [42 U.S.C. Section 6928].

11 11. The Administrator has delegated his authority under
12 Section 3008 of RCRA to the Regional Administrator, who has
13 redelegated such authority to the Director of the Hazardous Waste
14 Management Division.

15
16 C. VIOLATIONS

17 COUNT I

18 (Disposal of Hazardous Waste without a Permit)

19 12. Paragraphs 1 through 11 above are incorporated herein
20 by this reference as if the same were set forth in this Count I
21 in their entirety.

22 13. "Disposal" means the discharge, deposit, injection,
23 dumping, spilling, leaking, or placing of any solid waste or haz-
24 ardous waste into or on any land or water so that such solid
25 waste or hazardous waste or any constituent thereof may enter the
26 environment or be emitted into the air or discharged into any
27 waters, including ground waters [40 C.F.R. §260.10].

1 14. "Land Disposal" means placement in or on the land, and
2 includes placement in a surface impoundment[40 C.F.R. §268.2(a)].

3 15. A solid waste is a hazardous waste if it exhibits the
4 characteristic of EP toxicity for an identified contaminant; a
5 liquid waste which contains chromium at a concentration at or
6 above 5.0 milligrams per liter (mg/l) is a hazardous waste and
7 has the EPA Hazardous Waste Number D007 [40 C.F.R. §261.24(a)].

8 16. The product NALCO 8320 Corrosion Inhibitor is an
9 aqueous solution of sodium bichromate (CAS #7789-12-0). Accord-
10 ing to the Material Safety Data Sheet (MSDS) supplied by the
11 manufacturer, chromium and its compounds found in NALCO 8320 ex-
12 hibit both acute and chronic toxicity and have been found in ex-
13 periments to be carcinogenic, teratogenic and mutagenic. The
14 MSDS states that if this product becomes a waste, it meets the
15 criteria of a hazardous waste under 40 C.F.R. §261.

16 17. The EPA inspection of November 14-15, 1988 revealed
17 that NALCO 8320 Corrosion Inhibitor is added to the bearing cool-
18 ing water (BCW) system at the Facility. The Facility analyzes
19 the water in each BCW system approximately every three days for
20 hexavalent chromium, using analytical method 312 B from Standard
21 Methods for the Examination of Water and Wastewater, 15th edi-
22 tion. This method is equivalent to method 7196 from the EPA Test
23 methods for Evaluating Solid Wastes, volume 1A. The Facility's
24 Daily Log Reports show that the concentration of chromate in the
25 water is maintained at levels ranging from approximately 300 to
26 800 parts per million (ppm). This gives an equivalent chromium
27 concentration of approximately 130 to 350 mg/l.

1 17. According to plant employees and facility records, the
2 Facility has drained the BCW system for maintenance purposes on
3 at least four separate occasions since 1982. At least 87,000
4 gallons of chromium contaminated waste bearing cooling water
5 (Hazardous Waste D007) were released through an unlined ditch
6 into a surface impoundment on each occasion. No permit applica-
7 tion for treatment, storage or disposal of hazardous waste in the
8 surface impoundment was received by EPA. The dates of release
9 were as follows:

10 January 15, 1982

11 February 3, 1982

12 January 26, 1985

13 March 9, 1988

14 This constitutes disposal of hazardous waste according to
15 paragraphs 13 through 15 above.

16 18. On and after May 19, 1980, the treatment, storage or
17 disposal of any hazardous waste is prohibited except in accor-
18 dance with a hazardous waste permit issued pursuant to 40 C.F.R.
19 §270 of the RCRA regulations [40 C.F.R. §270.1(b) and RCRA Sec-
20 tion 3005(a), 42 U.S.C. §6925(a).] The permit system is designed
21 to provide for safe and controlled management of hazardous waste.
22 Any un-permitted treatment, storage or disposal could result in
23 uncontrolled release of hazardous waste and threaten human health
24 and the environment.

25 19. A facility which treats, stores or disposes of hazard-
26 ous waste must have submitted a part A of the hazardous waste
27 permit application by November 19, 1980 [40 C.F.R. §270.10(e)].
28

1 20. In the Hazardous and Solid Waste Amendments of 1984
2 (HSWA), Congress mandated that all land disposal facilities must
3 submit a final permit application (part B) or close by November
4 8, 1985 [RCRA Section 3005(e)(3)].

5 21. A facility which manages hazardous waste must have a
6 closure plan [40 C.F.R. §265.112]. The purpose of the closure
7 process is to ensure that hazardous waste or residues remaining
8 at a facility will not in the future escape and contaminate the
9 environment.

10 22. Respondent failed to file a part A or B permit applica-
11 tion to treat, store or dispose of Hazardous Waste in the unlined
12 ditch and surface impoundment under 40 C.F.R. §270.1(c), or to
13 submit a closure plan under 40 C.F.R. §265.112.

14
15 COUNT II

16 (Storage of Hazardous Waste for over 90 Days Without a Permit)

17 23. Paragraphs 1 through 11 above are incorporated herein
18 by this reference as if the same were set forth in this Count II
19 in their entirety.

20 24. A generator who accumulates hazardous waste for more
21 than 90 days is an operator of a storage facility and is subject
22 to the requirements of 40 C.F.R. Parts 264 and 265 and the permit
23 requirements of 40 C.F.R. Part 270 [40 C.F.R. §262.34(b) and RCRA
24 Section 3005(a)].

25 25. The EPA inspection of November 14-15, 1988 revealed
26 that the Facility stored 34 drums of hazardous waste, including
27 non-halogenated solvents, ignitable and corrosive liquids, ar-
28 senic and mercury wastes (hazardous wastes D002, D004, F001, F003

1 and F005) at their Central Storage Area for more than 90 days.
2 Chain of custody records and hazardous waste manifests available
3 at the Facility indicate that these wastes were stored at least
4 from October 10, 1985 through February 18, 1986, in violation of
5 40 C.F.R. § 262.34(b).

6 26. On April 9, 1987 the Facility submitted an Annual Haz-
7 ardous Waste Report to the State of Arizona for the year 1986.
8 This report noted that 9982 pounds (approximately 2196 kilograms)
9 of hazardous waste had been generated in 1986 and accumulated on
10 site, and had not been disposed of as of April 7, 1987. The
11 Facility stored at least 2196 kilograms of waste for more than 90
12 days in 1987, in violation of 40 C.F.R. §262.34(b).

13 27. Respondent has not filed a part A or B permit applica-
14 tion and does not have a permit to store hazardous waste under 40
15 C.F.R. §270.1(c).

16
17 Count III

18 (Failure to notify EPA of Hazardous Waste Disposal)

19 28. Paragraphs 1 through 11 above are incorporated herein
20 by this reference as if the same were set forth in this Count IV
21 in their entirety.

22 29. Any person who generates, transports, treats or stores
23 any hazardous waste must file a notification stating the location
24 and general description of such activity and the identified or
25 listed wastes handled by such person [RCRA Section 3010 and 40
26 C.F.R. §270.1(b)].

30. On August 18, 1980 the Respondent submitted a Notification of Hazardous Waste Activity for the Facility as a generator, treatment, storage and disposal facility of D000 (Toxic) waste.

31. On November 18, 1980, the Respondent submitted a revision to this Notification, changing the Facility's status to a generator only of hazardous waste. This revision included a data summary with an inventory of wastes handled, and a letter certifying that insufficient quantities of all wastes were handled so as to exempt the Facility from filing a permit application.

32. On October 7, 1983, the Respondent submitted a request to be listed as a "Small Quantity Generator". A small quantity generator is defined in 40 C.F.R. §260.10 as a generator who generates less than 1000 kilograms of hazardous waste in a calendar month.

33. The Facility has not subsequently notified EPA of hazardous waste disposal activities.

34. The Facility has failed to notify EPA of the disposal of chromium contaminated water as outlined in Count I above, in violation of Section 3010 of RCRA.

Count IV

(Failure to notify EPA of Hazardous Waste Storage)

35. Paragraphs 1 through 11 and 29 through 33 above are incorporated herein by this reference as if the same were set forth in this Count IV in their entirety.

36. The Facility has stored hazardous waste for more than ninety days as outlined in Count II above.

37. The current revision to the Facility's hazardous waste notification form lists the Facility only as a generator of small quantities of hazardous waste.

38. The Facility has failed to notify EPA of its hazardous waste storage activities, in violation of Section 3010 of RCRA.

D. PROPOSED CIVIL PENALTY

39. Section 3008(g) of RCRA, 42 U.S.C. §6928(g), authorizes a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA, 42 U.S.C. §6921 et seq. Upon examination of the facts alleged in this Complaint, after taking into account the seriousness of the violations and in accordance with the RCRA Civil Penalty Policy issued by the EPA on May 8, 1984, Complainant proposes assessment of the civil penalty set forth below:

Count I

Disposal of hazardous waste without a permit.....\$412,000

Count II

Storage of hazardous waste for over 90 days

without a permit.....\$ 10,999

Count III

Failure to notify EPA of disposal activities.....\$ 25,000

Count IV

Failure to notify EPA of storage activities.....\$ 7,999

TOTAL PROPOSED PENALTY.....\$455,998

1 COMPLIANCE ORDER

2 40. It is hereby ordered that Respondent shall submit a
3 certified or cashier's check in the sum of \$455,998 payable to
4 "Treasurer of the United States." The check shall be remitted to
5 the EPA, Region 9 (Regional Hearing Clerk), P.O. Box 360863M,
6 Pittsburgh, PA 15251 within 30 days of the effective date of
7 this Determination of Violation, Compliance Order, and Notice of
8 Right to Request a Hearing ("Complaint").

9 41. Payment shall be remitted within thirty (30) days of
10 the effective date of this Complaint, which is the date of serv-
11 ice of the Complaint. Service of the Complaint is complete when
12 the return mail receipt is signed by the Respondent or a duly
13 authorized representative of the Respondent in accordance with
14 the provisions of 40 C.F.R. §22.05(b) and §22.07(c).

15 42. In accordance with the Debt Collection Act of 1982 and
16 U.S. Treasury (TFRM 6-8000), payment must be received within
17 thirty (30) days of the effective date of this Complaint to avoid
18 additional charges. If not received, interest will accrue from
19 the effective date of this Complaint at the current interest rate
20 published by the U.S. Treasury. A late penalty charge of \$20.00
21 will be imposed after thirty (30) days with an additional charge
22 of \$10.00 for each subsequent 30-day period. A 6% per annum
23 penalty will be applied on any principal amount not paid within
24 90 days of the due date.

1 43. Enclosed is EPA 2570-6, Funds Transfer Deposit, to be
2 used for your payment. Please take this form to your bank and
3 request them to wire the amount stated on it through the Federal
4 Reserve Communication System (FRCS) to the account of the U.S.
5 Treasury at the Federal Reserve Bank of New York.

6 44. Respondent is ordered to come into compliance with the
7 requirements of 40 C.F.R. Parts 262, 265 and 270, and Sections
8 3004 and 3005 of RCRA, 42 U.S.C. §6924, and to document said com-
9 pliance by submittal of the following items in the specified time
10 frames. All days are consecutive days from the effective date of
11 this Complaint.

12
13 E. COMPLIANCE ACTION REQUIRED

14 Count I

15 (Disposal of Hazardous Waste without a Permit)

16 45. Effective immediately, Respondent shall cease disposing
17 of hazardous waste at the Facility, including any release of
18 chromium contaminated water from the BCW system.

19 46. Within 30 days, Respondent shall submit to EPA for ap-
20 proval a written plan describing how the Facility proposes to
21 properly dispose of the chromium contaminated bearing cooling
22 water in the future. This plan must include dates of all planned
23 future drainings of the BCW system, method of disposal, and
24 transporter, treatment, storage and disposal facility name where
25 applicable.

26 47. Within 15 days, Respondent shall submit to EPA for ap-
27 proval a sampling and analysis plan designed to determine the ex-
28 tent of contamination at the Facility.

1 a) The plan must address sampling and analysis of
2 soils and other potentially contaminated media, including
3 groundwater, that were or could have been contaminated by
4 chromium. This must include, but is not limited to the unlined
5 drainage ditch, the surface impoundment S-14 and surrounding
6 soils, any other impoundment or area to which the contaminated
7 wastewater was released, and the groundwater underlying the
8 Facility.

9 b) The plan must include methods to be used for sam-
10 pling and analysis, procedures for quality assurance and control
11 (QA/QC) of data, location and number of sampling points, ration-
12 ale for selection of these points, and a schedule of implementa-
13 tion.

14 c) All lab results and interpretation of sampling and
15 analysis data shall be submitted to EPA when received.

16 48. Within 60 days of approval of the sampling and analysis
17 plan, Respondent shall submit a closure plan that satisfies the
18 requirements of 40 C.F.R. §265.112. Respondent shall close the
19 areas to which hazardous waste was released in a manner that will
20 control, minimize or eliminate, to the extent necessary to
21 protect human health and the environment, future post-closure es-
22 cape of hazardous waste, constituents, leachate, contaminated
23 run-off, or hazardous waste decomposition products to the ground
24 or surface waters or to the atmosphere according to 40 C.F.R.
25 §265.111.

26 49. Within 15 days of receiving approval from EPA, Respon-
27 dent shall implement the closure plan in accordance with 40
28 C.F.R. §265.113 and other applicable regulations.

1 C. FAILURE TO COMPLY

2 In the event Respondent fails to comply with any provision
3 of the Compliance Order, then, in accordance with Section
4 3008(a)(3) of RCRA, 42 U.S.C. §6928 (a)(3), Respondent shall be
5 liable for a civil penalty of not more than twenty-five thousand
6 dollars (\$25,000) for each day of continued noncompliance, and,
7 in addition, permits issued or authority to operate in lieu of
8 the issuance of a permit may be suspended or revoked.

9
10 A. PUBLIC HEARING

11 In accordance with Section 3008(b) of RCRA, 42 U.S.C.
12 §6928(b), the Compliance Order set forth herein shall become
13 final unless Respondent files an Answer and request for public
14 hearing in writing no later than thirty (30) days after the ef-
15 fective date of the Complaint with the Regional Hearing Clerk,
16 United States Environmental Protection Agency, Region 9, 215
17 Fremont Street, San Francisco, California 94105. A copy of the
18 Answer and request for hearing and copies of all other documents
19 relating to these proceedings filed with the Regional Hearing
20 Clerk should be sent to Thelma Estrada, Assistant Regional Coun-
21 sel, at the address above.

22 The answer must clearly and directly admit, deny or explain
23 each of the factual allegations contained in the Complaint with
24 regard to which you have any knowledge. A failure to admit, deny
25 or explain any material fact or allegation will constitute an ad-
26 mission of the allegation. The Answer must also state (1) the
27 circumstances or arguments which constitute the ground of defense
28 and (2) the facts which you intend to place at issue.

1 If you fail to file a written Answer within thirty (30) days
2 of the effective date of this Complaint, you may be found in
3 default. Respondent's default will constitute an admission of
4 all facts alleged in the Complaint and a waiver of your right to
5 a hearing. A default order may be issued by the Regional Ad-
6 ministrator of EPA, and the penalty proposed in the Complaint
7 will become due and payable without further proceedings.

8 The public hearing that you request will be held in a loca-
9 tion determined in accordance with the Consolidated Rules of
10 Practice Governing the Administrative Assessment of Civil
11 Penalties and Revocation or Suspension of Permits, 40 C.F.R. Part
12 22, a copy of which accompanies the Complaint. The hearing will
13 be conducted in accordance with the provisions of the Administra-
14 tive Procedure Act, 5 U.S.C. 552 et seq., and 40 C.F.R. part 22.

15
16 B. INFORMAL SETTLEMENT

17 Whether or not you request a hearing, you may confer infor-
18 mally with EPA to discuss the alleged facts, violations and
19 amount of the penalty. An informal conference does not, however,
20 affect your obligation to file a written Answer within thirty
21 (30) days of the effective date of the Complaint. The informal
22 conference procedure may be pursued simultaneously with the ad-
23 judicatory hearing procedure.

24 Any settlement reached as a result of an informal conference
25 will, in addition to the compliance schedule set forth in the Or-
26 der above, be embodied in a written Consent Agreement and Final
27
28

1 Order. The issuance of the Consent Agreement and Final Order
2 will constitute waiver of your right to a hearing on any matter
3 to which you have stipulated.

4 If a settlement cannot be reached through an informal con-
5 ference, the filing of a written Answer within thirty (30) days
6 of the effective date of the Complaint will preserve your right
7 to a hearing.

8 EPA encourages all parties against whom a penalty is
9 proposed to explore the possibility of settlement. To request an
10 informal conference, you should contact Thelma Estrada, Assistant
11 Regional Counsel, at the above address, telephone number (415)
12 744-1080.

13 The effective date of this Determination of Violation, Com-
14 pliance Order and Notice of Right to Request a Hearing is the
15 date of Respondent's receipt of this document.

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19
20 11-22-89
21 Date

22 Jeffrey Zelikson
23 Jeffrey Zelikson
24 Director, Hazardous Waste
25 Management Division
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CERTIFICATION OF SERVICE

I hereby certify that the original of the foregoing Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent, certified mail, return receipt requested, to:

Mr. John R. Lassen, President
Salt River Project
Box 52025
Phoenix, AZ 85072

1521 Project Drive
Tempe, AZ 85281

Date

Hazardous Waste
Management Division